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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,979	04/05/2001	Jeffrey D. Flood	2695.01US02	4125

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EXAMINER
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SORKIN, DAVID L

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/826,979

Applicant(s)

FLOOD ET AL.

Examiner

David L. Sorkin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29, 31-34, 36-47, 49-52 and 54-60 is/are pending in the application.
- 4a) Of the above claim(s) 1-27 and 38-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28, 29, 31-34, 36, 37, 46, 47, 49-52 and 54-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Failure to Comply with 37 CFR 1.121(c)***

1. Withdrawn claims 39-41 and 43-45 have been (apparently inadvertently) amended without being marked-up as required by 37 CFR 1.121(c). Particularly, each of these claims has been amended to depend from "claim 0 [sic]". Any future amendment or proposed amendment should cancel these claims, restore the claims to their original text, or otherwise appropriately amend these claims.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 29, 47, 57 and 58 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claims 29 and 47, no description of "the lower mixing member engages the base wall" is found in the instant specification as originally filed. It appears that in a published CIP of this application such a description is found. (See 10/103,649.) Perhaps applicant has confused the two applications.

Similarly, regarding claim 57, "wiping slurry from the base wall, with the lower support member" is considered to be "new matter" not described in the originally filed disclosure.

Regarding claim 58, the recited "wiping slurry from the lower support members with the upper support members". Firstly, according to the specification, slurry is wiped by mixing members, not support members. Secondly, only one lower support member is disclosed, not a plurality. Thirdly, the only upper support member disclosed is the top wall, of which there is only one, not a plurality. It is also noted that parent claim 56 already recites "wiping slurry from the lower support member with the upper mixing members".

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 28, 29, 31-34, 36, 37, 46, 47, 49-52, 54, 55 and 58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention:

In independent claims 28 and 46, line 8 of each, there is lack of antecedent basis for "the upper member". It is unclear whether "the upper member" refers to a previously recited element or if it refers to an additional element. It is unclear if "the upper member" is a required element of the claimed structure. It is suggested that "the upper member" read - - the top wall - -.

Claims 29 and 47 are further rendered indefinite by the recitation "the lower mixing member engages the base wall...". While parent claims 28 and 46 recite "a

plurality of lower mixing members”, this is not considered to be sufficient antecedent basis for “the lower mixing member”. Furthermore, the “plurality of lower mixing members” is required to “wipe slurry from the top wall; however, according to the specification no “lower mixing member” wipes the top wall *and* “engages the base wall”.

In claim 58, there is lack of antecedent basis for “the lower support members” and for “the upper support members”. While there is antecedent basis for one lower support member, there is not antecedent basis for a plurality of such members. There is no antecedent basis for any upper support member.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 28, 31-33, 36, 37, 46, 49-51, 54, 55, 56, 59 and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by McCleary et al. (US 3,49,620). Regarding claim 28, McCleary ('620) discloses a slurry mixer comprising a substantially cylindrical side wall (24) with a lower end and an upper end; a base wall (the wall below 17 as seen in Figs. 1 and 6) enclosing the lower end of the side wall and defining a mixing region in which the slurry is prepared (see Figs. 1 and 6); a top wall (10c) enclosing the upper end of the side wall; a first stirring apparatus fixedly mounted in the mixing region, wherein the first stirring apparatus has a plurality of upper mixing members (18a,21) the extend from the top wall; and a second stirring apparatus rotatably mounted in the

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mixing region, wherein the second stirring apparatus has a lower support member (17) and a plurality of lower mixing members (18,19a,22) that extend from the lower support member, wherein the upper mixing members and the lower mixing members engage each other as the second stirring apparatus is rotated to remove slurry therefrom, and wherein at least one of the lower mixing members engage the side wall as the second stirring apparatus is rotated to remove slurry from the side wall (see Fig. 1, col. 2, lines 53-57; col. 3 line 50 to col. 4, line 9). Note also that applicant expressly admits on page 18, lines 11-12 of the 05 April 2004 communication that "the teeth [of McCleary] serve to scrape the slurry along the wall". Regarding claim 31, the upper mixing members are offset from the lower mixing members so that the upper mixing members pass between the lower mixing members as the second stirring apparatus is rotated (see Fig. 1).

Regarding claim 32, the upper mixing members and the lower mixing members engage each other as they move past each other to remove slurry therefrom (see Fig. 1, col. 2, lines 53-57; col. 3 line 50 to col. 4, line 9). Regarding claim 33, the mixer further comprises a dispensing auger (30) positioned in the mixing region proximate the base wall for dispensing slurry from the mixing region. Regarding claim 36, the top wall has three ports (11,12,13). Regarding claim 37, a dust collection apparatus (hopper 11) operably connected to the slurry mixer. Regarding claim 46, McCleary ('620) discloses a slurry mixer comprising a side wall (24) with a lower end and an upper end; a base wall (the wall below 17 as seen in Figs. 1 and 6) enclosing the lower end of the side wall and defining a mixing region in which the slurry is prepared (see Figs. 1 and 6); a top wall (10c) enclosing the upper end of the side wall; a first stirring apparatus fixedly

mounted in the mixing region, wherein the first stirring apparatus has a plurality of upper mixing members (18a,21) that extend from the upper member; and a second stirring apparatus rotatably mounted in the mixing region, wherein the second stirring apparatus has a lower support member (17) and a plurality of lower mixing members (18,19a,22) that extend from the lower support member, wherein the upper mixing members wipe slurry from the lower support member, wherein the lower support members wipe slurry from the top wall, and wherein at least one of the lower mixing members engage the side wall as the second stirring apparatus is rotated to remove slurry from the side wall (see Fig. 1, col. 2, lines 53-57; col. 3 line 50 to col. 4, line 9). Note also that applicant expressly admits on page 18, lines 11-12 of the 05 April 2004 communication that "the teeth [of McCleary] serve to scrape the slurry along the wall". Regarding claim 49, the upper mixing members are offset from the lower mixing members so that the upper mixing members pass between the lower mixing members as the second stirring apparatus is rotated (see Fig. 1). Regarding claim 50, the upper mixing members and the lower mixing members engage each other as they move past each other to remove slurry therefrom (see Fig. 1, col. 2, lines 53-57; col. 3 line 50 to col. 4, line 9).

Regarding claim 51, the mixer further comprises a dispensing auger (30) positioned in the mixing region proximate the base wall for dispensing slurry from the mixing region. Regarding claim 54, the top wall has three ports (11,12,13). Regarding claim 55, a dust collection apparatus (hopper 11) operably connected to the slurry mixer. Regarding claim 56, McCleary ('620) discloses a method of operating a slurry mixer comprising providing a slurry mixing having a substantially cylindrical side wall (24), a base wall

(the wall below 17 as seen in Figs. 1 and 6) and a top wall (10c), wherein the side wall has a lower end and an upper end, wherein the base wall encloses the lower end of the side wall, wherein the top wall encloses the upper end of the side wall, the base wall and the top wall define a mixing region (see Fig. 1); mounting a first stirring apparatus in the mixing region, wherein the first stirring apparatus includes a plurality of upper mixing members (18a,21) that extend from the top wall; rotatably mounting a second stirring apparatus in the mixing region, wherein the second stirring apparatus includes a lower support member (17) and a plurality of lower mixing members that extend from the lower support member (18,19a,22); feeding slurry components into the mixing region (see col. 4, lines 58-62); rotating the second stirring apparatus in the mixing region to form a slurry from the slurry component (see col. 3, lines 43-55); wiping slurry from the lower support member with the upper mixing members, from the top wall with the lower mixing members, and from the side wall with one of the lower mixing members (see Fig. 1, col. 2, lines 53-57; col. 3 line 50 to col. 4, line 9). Note also that applicant expressly admits on page 18, lines 11-12 of the 05 April 2004 communication that "the teeth [of McCleary] serve to scrape the slurry along the wall". Regarding claim 59, the upper mixing members are offset from the lower mixing members so that the upper mixing members pass between the lower mixing members as the second stirring apparatus is rotated (see Fig. 1). Regarding claim 60, slurry is dispensed from the mixing region with a dispensing auger (30).



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***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 34 and 52 rejected under 35 U.S.C. 103(a) as being unpatentable over McCleary et al. (US 3,49,620). In the apparatus of McCleary ('620) discussed above, it is not explicitly stated that a "motor" rotates the second stirring apparatus. However, col. 3, line 51 ("rotatably driven by shaft 16") and col. 4, line 12 ("mixer speed of 300 [rpm]") would have strongly suggested a motor to one of ordinary skill in the art.

***Response to Arguments***

10. Applicant points out that the lower support member of McCleary ('620) is disc shaped; however, the instant claims do not limit the shape of the lower support member.

11. Applicant states that the mixer of McCleary et al. ('620) is capable of being used to practice a continuous mixing operation, while the instant invention can only be used in batch mixing. However, even applicant's new method claims do not rule out continuous mixing.

12. In summary, while the applicant attempts to point out differences between McCleary ('620) and information in the instant disclosure, applicant fails to point out any difference between the invention as *claimed* and McCleary ('620).

***Conclusion***

13. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

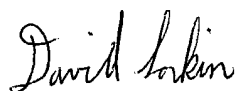
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Sorkin

David L. Sorkin  
Examiner  
Art Unit 1723